In the
Supreme Court of the United States.

OCTOBER TERM, 1978.

Nos. 78-329, 78-330.

FRANCIS X. BELLOTTI, ATTORNEY GENERAL
OF THE
COMMONWEALTH OF MASSACHUSETTS, ET AL.,
APPELLANTS,

JANE HUNERWADEL,
APPELLANT,
v.
WILLIAM BAIRD, ET AL.,
APPELLEES,

PLANNED PARENTHOOD LEAGUE
OF MASSACHUSETTS,
CRITTENTON HASTINGS HOUSE & CLINIC
AND PHILLIP G. STUBBLEFIELD, M.D.
APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS.

Motion to Affirm of Appellees Planned Parenthood League of Massachusetts, Crittenton Hastings House & Clinic and Phillip G. Stubblefield, M.D.

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FRANCIS X. BELLOTTI, Attorney General of the Commonwealth of Massachusetts, et al.,

Appellants,

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For the District of Massachusetts.

MOTION TO AFFIRM OF APPELLEES PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, CRITTENTON HASTINGS HOUSE & CLINIC and PHILLIP G. STUBBLEFIELD, M.D.

Planned Parenthood League of Massachusetts, the Crittenton Hastings House & Clinic, and Phillip G. Stubblefield, M.D., appellees in the above-entitled case, move, pursuant to Rule 16 of the Rules of the Supreme Court, that the final judgment and order of the United States District Court for the District of Massachusetts be affirmed on the ground that the questions presented by the appeals are so unsubstantial as not to warrant further argument.

Statement of the Case and Proceedings Below

Two pregnant teenage women, their physician and the director of a family planning clinic brought this class action in the district court challenging the constitutionality of the Massachusetts statute restricting the rights of minors to obtain abortions. The challenged statute, M.G.L. c. 112 §12S[1/], provides that a

1/ A 1977 Massachusetts enactment, St. 1977, ch. 397, altered the numbering of paragraphs in the abortion statute, so that §12P, which was the section number originally before the district
(footnote continued)

pregnant minor may not terminate her pregnancy unless she has the consent of both of her parents or she obtains the consent of a Massachusetts superior court judge. The Attorney General of the Commonwealth and others were named as defendants and Jane Hunerwadel, a parent, was allowed to intervene as defendant. In 1978, the district court permitted post-judgment intervention on plaintiffs' side by appellees here, Planned Parenthood League of Massachusetts and Crittenton Hastings House & Clinic, organizations which provide counseling to pregnant adolescents, and Phillip G. Stubblefield, M.D.[2/]

The case was first tried in 1975. After hearing several days of testimony, the three-judge district court, with a dissenting opinion, found M.G.L. c. 112 §12S to be unconstitutional and permanently enjoined its enforcement. Baird

(footnote 1 continued)

court, became §12S. The statute, entitled "An Act to Protect Unborn Children And Maternal Health Within Present Constitutional Limits", is set forth at pp. 4-5 of appellant Attorney General's Jurisdictional Statement.

2/ Prior to their intervention, these parties had been accorded a special stature beyond amicus status. Baird v. Bellotti, 450 F.Supp. 997, 999 n. 3, 1001 n. 6 (D.Mass. 1978).

v. Bellotti, 393 F. Supp. 847 (D. Mass. 1975) (Baird I).

The appellant Attorney General had represented to the district court his view of the meaning of several provisions of the statute. 393 F. Supp. at 855. On appeal to this Court, the Attorney General altered his statements as to the meaning of these provisions and argued that ambiguity in their meaning permitted a construction of the statute which might obviate or modify the constitutional question presented. Relying upon those representations, this Court vacated the decision below, ordered abstention, and directed the district court to certify questions about the meaning of §12S to the Supreme Judicial Court of Massachusetts. Bellotti v. Baird, 428 U. S. 132 (1976) (Bellotti). The district court certified a series of nine questions to the Supreme Judicial Court, which heard arguments and received briefs from the parties here, including the appellant Attorney General.

The decision of the Supreme Judicial Court, Baird v. Attorney General, Mass. Adv. Sh. (1977) 96, 360 N. E. 2d 288 (1977) (Attorney General), rejected many of the

Attorney General's proffered interpretations of the statute. The appellant Attorney General had asserted to this Court and to the Supreme Judicial Court: 1) that because of the Massachusetts "mature minor" rule, a minor who was "determined by a court to be capable of giving informed consent [to an abortion] will be allowed to do so [without judicial override of her decision]", 428 U.S. at 144; 2) that "a mature minor capable of giving informed consent [may] obtain ... an order permitting the abortion without parental consultation", id at 145; and 3) that "even a minor incapable of giving informed consent [may] obtain an order without parental consultation where there is a showing that the abortion would be in her best interests", id. The Supreme Judicial Court rejected each of these interpretations.

That court held that the statute requires all minors (unless married, widowed or divorced) to obtain the written consent of both parents to an abortion, and should either parent not consent, to obtain the consent of a superior court judge based

on his view of her best interests. Specifically, the Supreme Judicial Court held that the statute mandates parental consultation in all cases, including cases where a mature minor has given an informed consent and cases where the superior court judge would find that parental consultation is contrary to the best interests of the minor. 360 N.E. 2d at 296-297.

The Supreme Judicial Court further held that the issue before the superior court judge is not whether the minor is capable of giving an informed consent, but whether, in the judge's view, an abortion is in the best interests of the minor. Id. at 293. The superior court judge, thus, has the power to override the informed consent of a mature minor. The Supreme Judicial Court held that the burden is on the pregnant minor to commence the judicial proceeding and obtain consent of the superior court judge, and that the parents must be named as defendants and given notice of the superior court proceedings and an opportunity to contest. Id. at 297, 298.

In its opinion the Supreme Judicial Court also added an uniquely elastic final

interpretation of the statute. The court said that if any of its interpretations of the statute did not meet constitutional standards, then it meant to interpret the statute in any way which did meet those standards:

> "If the Supreme Court concludes that we have impermissibly assigned a greater role to the parents than we should or that we have otherwise burdened the minor's choice unconstitutionally, we add as a general principle that we would have construed the statute to conform to that interpretation." 360 N.E. 2d at 292.

With such guidance as to the precise meaning of the statute, the case was returned to the federal district court. The statute was stayed, Baird v. Bellotti, 428 F. Supp. 854 (D. Mass. 1977) (Baird II), and extensive discovery followed.

After evidentiary hearings, the district court held the statute, G.L. c. 112 §12S, to be unconstitutional, one judge dissenting in part, Baird v. Bellotti, 450 F. Supp. 997 (D. Mass. 1978) (Baird III). That decision is the basis for the instant appeals.

In the opinion by Senior Circuit Judge Bailey Aldrich, the district court found the statute to be unconstitutional because 1) its absolute requirement of parental consultation placed an improper burden on the minor's right to abortion where the superior court would, if free to do so, find that the minor's best interests require that one or both of her parents not be informed; and 2) its rejection of the mature minor rule as to abortions placed "an undue burden [on the minor] in the due process sense" and constituted "a discriminatory denial of equal protection". Baird III at 1004. The court also found that, as a practical matter, the broad language of the statute would chill the rights of minors by suggesting to parents that they were free to include considerations, such as their own interests, other than the consideration of the minor's best interests in deciding whether they would consent to an abortion. Finally, the court declined to rewrite the statute to meet constitutional requirements.

Argument

This Court, in its discretion, should not give plenary consideration to the issues raised by these appeals but should simply affirm the decision below. Maloney v. Lady Jane, 431 U.S. 926 (1977), affirming Lady Jane v. Maher, 420 F. Supp. 318 (D.Conn. 1976). In moving for summary affirmance, appellees do not denigrate the important potential benefit of parental consultation with a pregnant minor about her decision whether to carry her pregnancy to term. Appellees recognize, as did the district court, that such consultation is, as a general matter, both wise and desirable. Nor do appellees wish to suggest that the issue of such beneficial parental involvement is unsubstantial. That issue is not, however, the issue raised by this appeal. The much narrower issues involved here instead do not warrant further consideration and have already been resolved by this Court in prior decisions.

I. THE DECISION BELOW IS WHOLLY CONSISTENT WITH THIS COURT'S PRIOR DECISIONS IN DANFORTH AND BELLOTTI AND RAISES NO NEW ISSUES WARRANTING PLENARY CONSIDERATION BY THIS COURT.

In Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976), this Court invalidated a Missouri statute which imposed spousal and, in the case of unmarried minors, parental consent requirements on the right of a female and her doctor to decide whether to terminate her pregnancy.[3/] This Court struck down both requirements, holding that "the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy..." Id. at 74.

On the same day Danforth was decided, this Court, in vacating the decision in Baird I, commented that a statute which

> "permits a mature minor capable of giving informed consent to obtain, without undue burden, an order permitting the abortion without parental consultation, and, further, permits even a minor incapable of giving informed consent to obtain an order without parental consultation where there is a showing that the abortion would be in her best interest"

would be "fundamentally different" from a statute that creates a "parental veto". Bellotti at 145.

It is now apparent that the Massachusetts consent statute, as construed by the Supreme Judicial Court, suffers the same infirmity as the spousal and parental consent provisions of the Missouri statute -- that is, it permits a "third party" veto of a mature minor's informed decision to terminate her pregnancy. It is equally evident that the statute lacks the saving provisions which this Court hypothesized might distinguish the Massachusetts enactment from that struck down in Danforth.

A. The Massachusetts Statute Assigns to the State Court An Impermissible Third Party Veto.

The Massachusetts statute as construed by the Massachusetts Supreme Judicial Court

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3/ The Missouri statute, unlike the Massachusetts statute, required the consent of only one parent. Id. at 72.

requires a minor wishing an abortion, who fails to obtain the consent of both parents,[4/] to apply to a judge of the superior court for an order permitting the abortion over either parent's objection. However, the judge is to be guided by his own assessment as to whether the minor's "best interests" justify the abortion, and may "veto" an informed and reasonable decision of a mature minor to terminate her pregnancy. The Supreme Judicial Court stated:

> "...we do not view the judge's role as limited to a determination that the minor is capable of making, and has made, an informed and reasonable decision to have an abortion... [I]n circumstances where he determines that the best interests of the minor will not be served by an abortion, the judge's determination should prevail..." 360 N.E. 2d at 293.

Such a third party "veto", whether "of a parent or person in loco parentis", is precisely what was forbidden in Danforth.

4/ Even a mature, informed minor who has no parents or available parent substitutes apparently cannot obtain an abortion on her own consent, but must obtain consent from a superior court judge. 360 N.E. 2d at 294, 297, 301.

Id. at 75. All three members of the district court agreed that the Massachusetts statute, as construed, creates such an unconstitutional third-party veto. The unconstitutionality of the statute in this respect[5/] is patent and does not present an issue worthy of further argument before this Court.[6/] See Lady Jane v. Maher, 420 F.Supp. 38 (D. Conn. 1976) (three judge court), aff'd sub nom, Maloney v. Lady Jane, 431 U.S. 926 (1977) (regulation requiring minors in the care of the Commissioner of Children and Youth Services to obtain Commissioner's consent before undergoing abortion is invalid).

5/ The district court was, of course, equally correct in holding with respect to the mature minor capable of giving informed consent that the Massachusetts statute also worked "a discriminatory denial of equal protection". Accord, Wynn v. Carey, No. 78-1262 (7th Cir. August 17, 1978)(invalidating similar parental/judicial consent statute).

6/ Nor can the statute's reliance on a flat rule of chronological age before it will defer to the female's abortion decision be justified by an interest in administrative convenience. The statute provides a mechanism -- the superior court -- which is well suited to determine individual differences in minors' abilities to consent and in the advisability of parental consultation, but then forbids use of this mechanism to recognize such differences.

B. The Massachusetts Statute Impermissibly Requires Parental Consultation in All Cases, Even Those Cases Where Such Consultation is Judicially Determined to Be Against the Minor's "Best Interests."

Appellants argued to this Court in their appeal of Baird I that the Massachusetts statute need not be construed to mandate parental consultation in all cases but rather permitted the parents to be "bypassed" if the minor's best interests so dictated. As previously noted, these representations lead this Court to remand with the observation that a statute which "prefers parental consultation and consent, but that permits ... an order permitting the abortion without parental consultation..." would differ "fundamentally" from the "parental veto" statute at issue in Danforth. Bellotti at 145. Mr. Justice Stewart, concurring in Danforth and citing Bellotti, also noted that a "materially different constitutional issue" would be framed were the statute construed to require parental consultation and consent "in most cases" while recognizing that in some cases "the minor is mature enough

to give an informed consent without parental concurrence..." Danforth at 91.

However, as construed by the Supreme Judicial Court, the Massachusetts statute does not merely "prefer" parental consultation "in most cases", but mandates that in all cases reaching the superior court both parents must be informed and invited to oppose in court the minor's request for an abortion.[7/] The notice requirement obtains not only without regard to whether the minor is mature and capable of giving an informed consent, but also without regard to whether the minor's best interests would be served if her parents were not informed or consulted.[8/]

7/ Requiring the minor to name her parents as defendants in the superior court is also, as the district court found, destructive of the family relationship and places a heavy burden on the minor. Whatever the outcome of the court hearing, the minor "is in a no-win situation." Baird III at 1001-1002.

8/ In both Danforth and Bellotti, this Court recognized that in some instances it is in the minor's best interest, be she mature or not, that her parents not be consulted about the abortion decision. The defendants below admitted and the district court found that "an appreciable number

(footnote continued)

This Court has never suggested that a state may mandate parental consultation even where the minor is ill-served by notifying her parents, and the question whether a state may do so does not pose an issue worthy of further argument.

C. The Court Below Made No Decision Concerning the Validity of a Statute Which Encourages and Prefers Parental Consultation and Consent But Which Permits Certain Minors to Forgo Such Consultation and Consent With Court Approval.

It should be emphasized that the court below did not reach the question whether a statute which encourages and prefers parental consultation and consent but which provides an avenue for judicial approval of the minor's decision without parental consultation in some instances would be valid under the Due Process Clause. The court expressly declined to pass on

(footnote 8 continued)

of parents are not supportive," and that some parents would even inflict physical harm on the minor, or insist on an undesired marriage. Baird III at 1001. In Baird I, at 854, the district court also noted that some parents would "insist upon the continuance of the pregnancy simply as a punishment, or to teach a lesson."

appellees' assertion that any procedure which required a minor to sue her parents and obtain judicial approval of her abortion decision would entail impermissible burdens for the minor.[9/]

In short, the decision below simply rests on holdings that Massachusetts may neither mandate parental consultation in all cases nor vest in a superior court judge discretion to "veto" or "override" the decision of a mature, informed minor and her physician to terminate her pregnancy. These holdings are firmly grounded in this Court's Danforth decision and present no new issue worthy of plenary consideration.

9/ Although the court declined to reach this issue, appellees produced expert testimony, which the court found credible, that many minors would rather resort to illegal and frequently dangerous abortions than institute court proceedings against their parents. Baird III at 1001-1002.

II. THE SCOPE OF THE REMEDY ORDERED BY THE DISTRICT COURT WAS PROPER AND DOES NOT WARRANT FURTHER REVIEW.

A. It Would Have Been Error For The District Court To Use An "As Applied" Analysis As Urged By Appellant Attorney General.

Ignoring the decisions of this Court on the subject of abortion, appellant Attorney General argues that the district court should have resolved this case by using an "as applied" constitutional analysis. See said appellant's Jurisdictional Statement, pp. 17-19. At no time has this Court examined statutes in abortion cases under an "as applied" analysis. See, e.g., Roe v. Wade, 410 U.S. 113 (1973); Doe v. Bolton, 410 U.S. 179 (1973), Danforth; supra; Maher v. Roe, 432 U.S. 464 (1977). Nor would such an analysis by the district court have been appropriate.

The named parties in this case represent the classes of all minors and physicians in the Commonwealth and challenged the statute as being unconstitutional with respect to these classes. The challenge was procedurally identical to the successful class action challenge to the spousal and parental consent requirements in Danforth.

Appellant's claim that some form of "as applied" analysis was required is specious because its logic would require every individual minor desiring an abortion over the objection of either parent to go to court and demonstrate that the statute is unconstitutional as applied to her. The claim is also meaningless because the remedy will apply to the classes of all minors and physicians. At best, these assertions by appellant resolve into a complaint that the district court should have rewritten the statute so as to save it. See appellant Attorney General's Jurisdictional Statement, Part IV.

To the extent that appellants attack the district court's insistence that the state legislature draft an enactment narrowly tailored to meet legitimate state concerns, their argument flies in the face of this Court's repeated pronouncements that statutes in this area must be "narrowly drawn to express only the legitimate state interests at stake." Roe v. Wade, 410 U.S. 113, 155 (1973). See also Carey v. Population Services Internat'l, 431 U.S. 678, 686 (1977) ("where a decision as fundamental as whether to bear or beget a child is involved, regula-

tions imposing a burden on it ... must be narrowly drawn to express only those interests"). See also Maher v. Roe, supra at 145.

B. The Remedy Ordered Was Appropriate.

Under the circumstances of this case, it is extraordinary that appellant Attorney General seriously argues that this Court should reverse the district court for failing to rewrite this statute. At least three different meanings of the statute have been presented by this appellant. The Attorney General's mistaken conjectures as to the meaning of the statute have already occasioned a remarkable number of judicial hearings and opinions. This Court previously ordered abstention in this case so that the Supreme Judicial Court could interpret the meaning of the statute. Appellants now ask that this interpretation be disregarded and that some new "savings" construction be adopted.

The district court was, under this Court's repeated rulings, bound by the construction of state law given by the state's highest court. Mullaney v. Wilbur, 421 U.S. 684, 691 (1975); Winters v. New York, 333 U.S. 507 (1948); Murdock v. City of Memphis, 20 Wall. 590 (1875).

"In dealing with state laws, the [federal] Court cannot simply substitute a saving reinterpretation of a statute for that authoritatively given the statute by the state's highest court." Tribe, American Constitutional Law 717 (1978). Such an action by a federal court would violate basic principles of federalism.

Further, appellants' arguments that the court below was required to reconstruct the statute improperly thrusts upon the federal judiciary a state legislative function. Appellants in effect ask the federal courts "to make a new law, not to enforce an old one," a duty long eschewed by this Court. United States v. Reese, 92 U.S. 214, 221 (1876).[10/]

Similarly, the district court was also plainly correct in declining to accept the "invitation" (as appellant calls it) of the Supreme Judicial Court to find that the statute means whatever the Con-

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10/ The assumption of such a legislative function would be particularly inappropriate here where the Massachusetts legislature gave clear expression of its intention to adopt the statutory interpretation offered in the 1976 Supreme Judicial Court opinion by reenacting the statute in 1977 without changing its substantive content.

stitution requires. To have done otherwise would have been to exercise legislative functions which Article III does not grant to the federal courts. Under the Supreme Judicial Court's elastic interpretation, there would be a statute with no fixed content which the federal courts are to redraft according to whatever the Constitution requires. This would be analogous to giving advisory opinions on the meaning of the Constitution, which the federal courts, unlike the Supreme Judicial Court, may not do.

The Supreme Judicial Court's open-ended construction of the statute left the district court little choice as to the remedy it ordered. As the district court said:

> "It is commonly said that a statute is to be given a constitutional construction 'if fairly possible ... when a limiting construction ... could be placed.' Here something more is involved than construing language. The Massachusetts court, in addition to contradicting its specific terms, suggests reading into the statute affirmative provisions made out of nothing but a generally announced purpose to pass constitutional muster. In so doing, the court seems to have found the ultimate remedy for all constitutional

infirmities. If a statute which, in terms, requires parental consultation without exception, can be 'construed to require as much parental consultation as is permissible constitutionally,' here, at once, is an instant cure, both for overbreadth, and for lack of standards. Regardless of whether a statute says too much, or too little, so long as the legislature intended it to be constitutional, when it comes before a court it will be appropriately rewritten. With due respect, we cannot believe this to be possible." Baird III at 1005-06.

The Massachusetts legislature enacted a statute which paid no deference to its obligation to draft such statutes with reasonable clarity and narrowness, and the statute was properly voided.[11/] See Part IIA, supra.

11/ Appellant Attorney General's attempt to impute to the district court rulings as to the second and third trimester, see Jurisdictional Statement, p. 7, is a misstatement of the district court's decision. In the passage cited, Baird III at 1001, the district court was commenting on the misleading nature of a diagram that appellant had submitted to the court. It should be also noted that the minor consent statute itself makes no distinction between the first trimester and the later trimesters, although this distinction is made in the statutes defining the circumstances under which abortions are legal. Compare M.G.L. c. 112 §12L with c. 112 §12M. Just as this Court did not see fit in Roe v. Wade to "save" so much of that statute as might be applied to third trimester abortions, so too the district court here was not obligated to rewrite the Massachusetts stature.

C. The District Court Order Leaves Intact The Common Law Minor Consent Requirements.

The order of the District Court enjoining M.G.L. c. 112 §12S does not, contrary to the impression left by appellants[12/], void all parental consent requirements for minors to obtain abortions. Appellants would have this Court overlook the Massachusetts common law rule that an immature minor needs the consent of one parent to undergo medical or surgical procedures. Attorney General, supra, 360 N.E. 2d at 292-293, 296. The district court found, in Baird I at 852, that there was nothing which required an immature minor's consent for abortion purposes to be treated differently from other medical and surgical procedures, and that those procedures required the consent of one parent.

12/ See appellant Attorney General's Jurisdictional Statement, pp. 21-22: "... physicians and other health care providers in Massachusetts are now entirely free, at least as a matter of civil and criminal statutory law, to perform abortions upon adolescents and children without parental consent ...."

III. APPELLANT ATTORNEY GENERAL'S FURTHER GROUNDS FOR REVIEW DO NOT PRESENT SUBSTANTIAL QUESTIONS.

A. The District Court's Refusal to Authorize A Survey of Health Care Providers Does Not Raise an Issue Worthy of Further Consideration.

Appellant Attorney General complains that during discovery the district court denied his motion for leave to survey the class of health care providers in Massachusetts about their consent requirements for different medical procedures, age groups, and social situations. This complaint is then bootstrapped into an assertion that the district court's findings were based on an inadequate factual record.[13/] Appellant makes no showing, and indeed no claim, that the district court's factual findings are clearly

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13/ Appellant's claim that there was an inadequate record before the district court is insubstantial. After allowing considerable discovery, the district court held two additional days of trial (after three previous days in Baird I), heard witnesses and expert witnesses from both sides, and had before it extensive admissions by the parties. The testimony of certain experts covered immature minors and was not limited to particular stages of pregnancy. There was a more than adequate record for the court's findings.

erroneous, see Fed. R. Civ. P. 52, or that the court abused its discretion.

Insofar as appellant sought to conduct a survey of a portion of the plaintiff class (health care providers), it was well within the discretion of the district court to deny permission. It is settled that contact of absentee class members rests in the court's discretion. Weight Watchers of Phila. v. Weight Watchers Int'l, 455 F.2d 770, .775 (2d Cir. 1972). Similarly, even had a survey been conducted, its admissibility at trial is committed to the discretion of the trial court, and such evidence has often been criticized for its unreliability. Colorificio Italiano Max Meyer, S.P.A. v. S/S Hellenic Wave, 419 F.2d 223 (5th Cir. 1969); Sears, Roebuck & Co. v. All States Life Ins. Co., 246 F.2d 161, 171-72 (5th Cir. 1957), cert. denied 355 U.S. 894 (1957); Bristol Myers v. Federal Trade Commission, 185 F.2d 58 (4th Cir. 1950). See Fed. R. Evid. 403. A survey of different consent practices would also be of dubious relevance because the matter of consent to medical procedures for minors is explicitly covered by both statute, M.G.L. c. 112 §12F, and common law. See Attorney General at 296.

B. The District Court's Award of Costs Does Not Raise An Issue Worthy of Further Consideration.

The award of costs was also proper on the record here and does not, in any case, raise a substantial question. Appellant Attorney General has, Jurisdictional Statement p. 23, misstated the action of the district court. The court's short hand term "mistaken advocacy," which was the basis for the award, plainly refers to appellant's frequently changing, frequently inconsistent, and frequently mistaken representations as to the meaning of the statute. These changes are described in Baird II and extended this litigation through lengthy proceedings in several courts. The burden on appellees to secure their rights was commensurately increased and the award of costs is proper.

That costs may be awarded to a successful litigant is hardly extraordinary, nor does the fact that costs here are assessed against the Attorney General pose any substantial issue. See Hutto v. Finney, 46 U.S.L.W. 4817 (1978) and cases cited therein.

Conclusion

For the foregoing reasons, the motion to affirm of Planned Parenthood League of Massachusetts, et al., should be granted.

Respectfully submitted,

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